



County of Sonoma

State of California

Date: December 6, 2016

Item Number: _____

Resolution Number: _____



Unanimous Vote
Required

**Resolution Of The Board Of Supervisors Of The County Of Sonoma, State Of California,
Declaring an Emergency and Calling a Special Election to Submit to the Voters of Sonoma
County a Proposed Ordinance Imposing a Cannabis Business Tax on Commercial Cannabis
Business in Unincorporated Sonoma County, and Ordering that the Election be Consolidated
with the Special Election to be Conducted on March 7, 2017**

Whereas, the Board of Supervisors, by its Resolution No. _____ has introduced, read the title of, and waived further reading of a business license tax ordinance, as authorized by Revenue and Taxation Code §7284, and will consider the passage of such ordinance at its meeting on December 13, 2016; and

Whereas, Article 13 C, §2(b) of the California Constitution requires that the imposition of such tax be approved by a majority of the county electorate; and

Whereas, the County of Sonoma ("County") promotes a strong quality of life by providing general services to local residents to protect public health and safety, including: fire and police protection, emergency response, health services, housing, roads, and environmental protection; and

Whereas, the Board of Supervisors is considering the adoption of a zoning ordinance to legalize but regulate medical cannabis cultivation and related medical cannabis support uses within unincorporated Sonoma County; and

Whereas, the Board is also considering the adoption of an ordinance to establish regulations and require health permits for medical cannabis dispensaries and edible medical cannabis product manufacturing sites; and

Whereas, on November 8, 2016 the voters of California adopted Proposition 64 which legalized the use of cannabis for adult use and established a maximum cultivation allowance of 6 plants for personal use. The Proposition allows for local control of adult use cannabis land uses, and reasonable regulation of personal cultivation of up to 6 plants per residence. This Board is likely to consider expanded regulations for non-

medical cannabis cultivation and related non-medical cannabis support uses as a result of this Proposition; and

Whereas, comprehensive regulation of premises used for cannabis cultivation or commercial activities related to cannabis is proper and necessary to address the risks and adverse impacts of legalized cannabis in Sonoma County, including the potential presence of cannabis plants or products in areas frequented by children (including schools and parks), criminal activity, degradation of the natural environment, malodorous smells, indoor electrical fire hazards, impacts to surface and groundwater resources, poisonings due to intentional and accidental consumption, increased injuries due to driving under the influence, increased mental health and substance abuse disorders, and potential access and use by youth; and

Whereas, while fees can recover costs associated with issuing permits, inspections, and compliance monitoring, they cannot be used to fund costs not attributable to a permittee, including those related to code enforcement, law enforcement, policy development, health impacts and education, and environmental cleanup; and

Whereas, services supporting the health and safety of the County's residents are funded through the County's General Fund; and

Whereas, without an additional funding source, the County will not be able to address the risks and adverse impacts of legalized cannabis in Sonoma County while also maintaining the existing general governmental services that the County funds through its General Fund; and

Whereas, waiting to call an election on a general cannabis business tax until the next regularly scheduled general election for members of this Board (November 2018), should the voters agree, would forego the opportunity to devote approximately \$10 million in revenues to the health and safety of the public in the interim; and

Whereas, the Board finds that the need for additional funding for the health and safety of the County's residents is so great that foregoing the opportunity for approximately \$10 million in revenue constitutes an emergency sufficient to require the placement of a general tax on the March 7, 2017 ballot.

Now, Therefore, Be It Resolved that:

1. Pursuant to Elections Code Section 12001, 10400, and 9140, the Board of Supervisors hereby calls a special election for March 7, 2017, on the proposed measure imposing a general business license tax, to be levied at a maximum rate of \$38 per square foot (annually adjusted by Consumer Price Index increases) or 10% on gross receipts on cannabis cultivation, and at a maximum rate of 10% of gross receipts on other cannabis businesses until repealed.

2. The Board of Supervisors hereby orders that said election of the measure shall be consolidated with the special election to be held on that date.

3. The measure shall be submitted to the voters in the following form:

| | |
|---|--|
| Shall an ordinance be adopted imposing a cannabis business tax in unincorporated Sonoma County on cultivation up to \$38 per square foot (annually adjusted by CPI increases) or 10% on gross receipts, and on other cannabis businesses up to 10% on gross receipts, to fund essential county services such as addressing industry impacts, public safety, fire, health, housing, roads, and environmental protection, with funds staying local and subject to audits, generating undetermined revenue until repealed? | <div data-bbox="1266 527 1326 558">Yes</div> <hr data-bbox="1177 640 1364 646"/> <div data-bbox="1266 724 1318 756">No</div> |
|---|--|

4. As required by law, the full text of the measure shall be printed in the information pamphlet provided to voters. The full text of the measure is entitled “An Ordinance of the Board of Supervisors of the County of Sonoma, State of California, Imposing a Cannabis Business Tax on Commercial Cannabis Business” and is attached hereto as Exhibit A.

5. The County Clerk is hereby authorized, instructed, and directed to provide and furnish any and all official ballots, notices, printed matter, and all supplies, equipment, and paraphernalia that may be necessary in order to properly and lawfully conduct an election.

6. The County Clerk is hereby further directed to take the necessary and appropriate actions to provide the necessary election officers, polling places, and voting precincts.

7. In accordance with the provisions of the Elections Code, the County Counsel is authorized to prepare an impartial analysis of the measure, and Supervisor(s) _____ is/are authorized and directed to submit an argument in favor of the measure and a response to any argument in opposition to the measure on behalf of the entire Board of Supervisors.

8. The polls for said election shall be open during the hours required by law and said election, with respect to the foregoing ballot measure, shall be conducted as provided by law for the holding of County initiative elections.

9. Notice of time and place of holding said election, together with any other notices required by law, shall be given by the County Clerk.

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Supervisors:

Gorin:

Rabbitt:

Zane:

Gore:

Carrillo:

Ayes:

Noes:

Absent:

Abstain:

So Ordered.

Exhibit A

ORDINANCE NO. ()

AN ORDINANCE OF THE BOARD OF SUPERVISORS OF THE COUNTY OF SONOMA, STATE OF CALIFORNIA, IMPOSING A CANNABIS BUSINESS TAX ON COMMERCIAL CANNABIS BUSINESS

The Board of Supervisors of the County of Sonoma, State of California, ordains as follows:

Section 1. Title. This ordinance shall be known as the Cannabis Business Tax Ordinance. This ordinance shall be applicable in the unincorporated territory of the County of Sonoma, which shall be referred to herein as "County."

Section 2. General Tax. The Cannabis Business Tax is enacted solely for general governmental purposes for the County and not for specific purposes. All of the proceeds from the tax imposed by this Chapter shall be placed in the County's general fund and used for general governmental purposes.

Section 3. Purpose of the Ordinance. This ordinance is adopted to achieve the following purposes, among others, and directs that the provisions hereof be interpreted in order to accomplish those purposes:

A. To impose a tax on the privilege of cultivating, dispensing, producing, processing, preparing, storing, providing, donating, selling, or distributing medical cannabis or medical cannabis products by commercial cannabis businesses in the unincorporated area of the County, pursuant to the state Medical Cannabis Regulation and Safety Act, specifically California Business and Professions Code section 19348, or other enabling legislation;

B. To impose a tax on the privilege of cultivating, manufacturing, producing, processing, preparing, storing, providing, donating, selling, or distributing nonmedical marijuana and marijuana products and accessories by commercial cannabis businesses in the unincorporated area of the County pursuant to the "California Control, Regulate and Tax Adult Use of Marijuana Initiative" approved by the voters in the November 2016 election, or other enabling legislation, notwithstanding if state law uses the term "marijuana" or "cannabis";

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C. To impose a tax on lawful commercial cannabis business in accordance with the authority granted by California Revenue and Taxation Code section 7284 to impose a business license tax;

D. To specify the type of tax and rate of tax to be levied and the method of collection; and

E. To comply with all requirements for imposition of a general tax, such tax to become operative only if submitted to the electorate and approved by a majority vote of the voters voting in an election on the issue.

Section 4. Definitions. Terms that are not defined in this Chapter shall have the meanings ascribed to them in Section 26-02-140 (Definitions) of Chapter 26 of the Sonoma County Code. The following words and phrases shall have the meanings set forth below when used in this Chapter:

A. "Business" shall include all activities engaged in or caused to be engaged in within the unincorporated area of the County, including any commercial or industrial enterprise, trade, profession, occupation, vocation, calling, or livelihood, whether or not carried on for gain or profit, but shall not include the services rendered by an employee to his or her employer.

B. "Cannabis" means all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, or any other strain or varietal of the genus *Cannabis* that may exist or hereafter be discovered or developed that has psychoactive or medicinal properties, whether growing or not, including the seeds thereof. "Cannabis" also means marijuana as defined by Section 11018 of the Health and Safety Code as enacted by Chapter 1407 of the Statutes of 1972. For the purpose of this section, "cannabis" does not mean "industrial hemp" as defined by Section 81000 of the Food and Agricultural Code or Section 11018.5 of the Health and Safety Code. Cannabis is classified as an agricultural product separately from other agricultural crops.

C. "Cannabis cultivation area" means the total aggregate area(s) of cannabis cultivation on a single premise as measured around the outermost perimeter of each separate and discrete area of cannabis cultivation at the dripline of the canopy expected at maturity and includes, but is not limited to, the space between plants within the cultivation area, the exterior dimensions of garden beds, garden plots, hoop houses, green houses, and each room or area where cannabis plants are grown, as determined by the review authority.

D. "Cannabis nursery" means a location that produces cannabis clones, immature plants, and seeds for wholesale distribution, used specifically for the planting, propagation, and cultivation of cannabis.

E. "Cannabis product" means any product containing cannabis, including, but not limited to, flowers, buds, oils, tinctures, concentrates, extractions, and edibles intended to be sold for use by medical cannabis patients in California pursuant to the Compassionate Use Act of 1996 (Proposition 215), found at Section 11362.5 of the Health and Safety Code. For the purposes of this chapter, medical cannabis does not include industrial hemp as defined by Section 81000 of the Food and Agricultural Code or Section 11018.5 of the Health and Safety Code.

F. "Commercial cannabis business" means any commercial business activity relating to cannabis, including but not limited to cultivating, transporting, distributing, manufacturing, compounding, converting, processing, preparing, storing, packaging, delivering, and selling (wholesale and/or retail sales) of cannabis and any ancillary products and accessories in the unincorporated area of the County, whether or not carried on for gain or profit.

G. "Commercial cannabis business tax," "business tax," or "commercial cannabis tax" means the tax due pursuant to this Chapter for engaging in commercial cannabis business in the unincorporated area of the County.

H. "Commercial cannabis cultivation" means cultivation conducted by, for, or as part of a commercial cannabis business.

I. "County permit" means a permit issued by the County to a person to authorize that person to operate or engage in a commercial cannabis business.

J. "Cultivation" means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis. For purposes of this Chapter, "cultivation" does not include a cannabis nursery.

K. "Delivery" means the commercial transfer of cannabis or cannabis products from a dispensary.

L. "Dispensary" means a facility where cannabis, cannabis products, or devices for the use of cannabis or cannabis products are offered, either individually or in any combination, for retail sale, including a person that delivers cannabis and cannabis products as part of a retail sale. Where a dispensary performs its functions through a technology platform of any type or character, the technology platform shall also be deemed a dispensary for purposes of this Chapter, and shall have the same duties and liabilities as the principal. Compliance with the provisions of this Chapter by either the principal or the technology platform shall, however, be considered compliance by both.

M. "Distributor" or "distribution" or "distribution facility" means a person involved in the procurement, sale, and/or transport of cannabis and cannabis products between two or more cannabis businesses.

N. "Employee" means each and every person engaged in the operation or conduct of any business, whether as owner, member of the owner's family, partner, associate, agent, manager or solicitor, and each and every other person employed or working in such business for a wage, salary, commission, barter or any other form of compensation.

O. "Engaged in business" means the commencing, conducting, operating, managing or carrying on of a cannabis business and the exercise of corporate or franchise powers, whether done as owner, or by means of an officer, agent, manager, employee, or otherwise, whether operating from a fixed location in the unincorporated area of the County or coming into the unincorporated area of the County from an outside location to engage in such activities. A person shall be deemed engaged in business within the County if:

1. Such person or person's employee maintains a fixed place of business within unincorporated area of the County for the benefit or partial benefit of such person;
2. Such person or person's employee owns or leases real property within the unincorporated area of County for business purposes;
3. Such person or person's employee regularly maintains a stock of tangible personal property in the unincorporated area of County for sale in the ordinary course of business;
4. Such person or person's employee regularly conducts solicitation of business within the unincorporated area of County;
5. Such person or person's employee performs work or renders services in the unincorporated area of County; and
6. Such person or person's employee utilizes the streets within the unincorporated area of County in connection with the operation of motor vehicles for business purposes.

The foregoing specified activities shall not be a limitation on the meaning of "engaged in business."

P. "Evidence of doing business" means evidence such as, without limitation, use of signs, circulars, cards or any other advertising media, including the use of internet or telephone solicitation, or representation to a government agency or to the public that such person is engaged in a cannabis business in the unincorporated area of County.

Q. "Fiscal year" means July 1 through June 30 of the following calendar year.

R. "Gross Receipts," except as otherwise specifically provided, means the total amount actually received or receivable from all sales; the total amount or compensation actually received or receivable for the performance of any act or service, of whatever nature it may be, for which a charge is made or credit allowed, whether or not such act or service is done as a part of or in connection with the sale of materials, goods, wares or merchandise; discounts, rents, royalties, fees, commissions, dividends, and gains realized from trading in stocks or bonds, however designated. Included in "gross receipts" shall be all receipts, cash, credits and property of any kind or nature, without any deduction there from on account of the cost of the property sold, the cost of materials used, labor or service costs, interest paid or payable, or losses or other expenses whatsoever, except that the following shall be excluded therefrom:

1. Cash discounts where allowed and taken on sales;
2. Credit allowed on property accepted as part of the purchase price and which property may later be sold, at which time the sales price shall be included as gross receipts;
3. Any tax required by law to be included in or added to the purchase price and collected from the consumer or purchaser;
4. Such part of the sale price of any property returned by purchasers to the seller as refunded by the seller by way of cash or credit allowances or return of refundable deposits previously included in gross receipts;
5. Receipts from investments where the holder of the investment receives only interest and/or dividends, royalties, annuities and gains from the sale or exchange of stock or securities solely for a person's own account, not derived in the ordinary course of a business;
6. Receipts derived from the occasional sale of used, obsolete or surplus trade fixtures, machinery or other equipment used by the taxpayer in the regular course of the taxpayer's business;

7. Cash value of sales, trades or transactions between departments or units of the same business;

8. Whenever there are included within the gross receipts amounts which reflect sales for which credit is extended and such amount proved uncollectible in a subsequent year, those amounts may be excluded from the gross receipts in the year they prove to be uncollectible; provided, however, if the whole or portion of such amounts excluded as uncollectible are subsequently collected they shall be included in the amount of gross receipts for the period when they are recovered;

9. Transactions between a partnership and its partners;

10. Receipts from services or sales in transactions between affiliated corporations. An affiliated corporation is a corporation:

a. The voting and non-voting stock of which is owned at least eighty percent by such other corporation with which such transaction is had; or

b. Which owns at least eighty percent of the voting and non-voting stock of such other corporation; or

c. At least eighty percent of the voting and non-voting stock of which is owned by a common parent corporation which also has such ownership of the corporation with which such transaction is had.

11. Transactions between a limited liability company and its member(s), provided the limited liability company has elected to file as a Subchapter K entity under the Internal Revenue Code and that such transaction(s) shall be treated the same as between a partnership and its partner(s) as specified in Subsection (9) above;

12. Receipts of refundable deposits, except that such deposits when forfeited and taken into income of the business shall not be excluded when in excess of one dollar;

13. Amounts collected for others where the business is acting as an agent or trustee and to the extent that such amounts are paid to those for whom collected. These agents or trustees must provide the finance department with the names and the addresses of the others and the amounts paid to them. This exclusion shall not apply to any fees, percentages, or other payments retained by the agent or trustees.

S. "Indoor" means indoor cultivation of cannabis using exclusively artificial lighting.

T. "Manufacturer" means a person that conducts the production, preparation, propagation, or compounding of manufactured cannabis or cannabis products either directly or indirectly or by extraction methods, or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis at a fixed location that packages or repackages cannabis or cannabis products or labels or relabels its container.

U. "Mixed-Light" means cultivation of cannabis using any combination of natural and supplemental artificial lighting. Greenhouses, hoop houses, hot houses and similar structures or light deprivation systems are included in this category.

V. "Outdoor" means cultivation of cannabis using no artificial lighting conducted in the ground or in containers outdoors with no covering. Outdoor cultivation does not include greenhouses, hoop houses, hot houses or similar structures.

W. "Person" means an individual, firm, partnership, joint venture, association, corporation, limited liability company, estate, trust, business trust, receiver, syndicate, tribe or any other group or combination acting as a unit and includes the plural as well as the singular number.

X. "Personal cannabis cultivation" means cultivation within the residency, plant number, and/or square footage limitations provided in Chapter 26-88-258 exclusively for noncommercial.

Y. "Sale" means and includes any sale, exchange, or barter.

Z. "Square foot" or "square footage" means the maximum amount of cannabis cultivation area for commercial cannabis cultivation authorized by a County permit issued to a person engaging in commercial cannabis business, or by a state license in the absence of a County permit or license, not deducting for unutilized square footage, and shall be the basis for the tax base for cultivation.

AA. "State" means the State of California.

BB. "State license," "license," or "registration" means a state license issued pursuant to California Business & Professions Code Sections 19300, et seq. or other applicable state law.

CC. "Testing laboratory" means a facility, entity, or site in the state that offers or performs testing of cannabis or cannabis products.

DD. "Transporter" means a person engaged in the transfer of cannabis or cannabis products from the business location of one commercial cannabis business to the business location of another commercial cannabis business, for the purposes of conducting commercial cannabis activity.

EE. "Treasurer-Tax Collector" means the Treasurer-Tax Collector of the County of Sonoma, his or her deputies or any other County officer charged with the administration of the provisions of this Chapter.

Section 5. Tax Imposed. There is established and imposed a cannabis business tax at the rates set forth in this Chapter. Every person who is engaged in commercial cannabis business in the unincorporated area of the County shall pay an annual cannabis business tax.

A. Tax on Commercial Cannabis Cultivation

1. Every person who is engaged in commercial cannabis cultivation in the unincorporated area of the County shall pay an annual commercial cannabis business tax either: (1) at a rate of up to \$10.00 per square foot of outdoor cultivation area, \$38.00 per square foot of indoor cultivation area, and \$22 per square foot of mixed-light cultivation area, or (2) at a rate of up to ten percent of gross receipts per fiscal year. When the rate is determined on a square footage basis, on July 1 of each fiscal year succeeding the year of imposition of a square footage based tax on commercial cannabis cultivation, the amount of the tax shall be increased by the most recent change in the annual average of the Consumer Price Index ("CPI") for all urban consumers in the San-Francisco-Oakland-San Jose areas as published by the United States Government Bureau of Labor Statistics. However, no CPI adjustment resulting in a decrease of any tax imposed by this subsection shall be made. The tax under this subsection shall not be imposed unless and until the Board of Supervisors, by ordinance, takes action to: (1) specify whether the tax on commercial cannabis cultivation will be imposed on a square footage or gross receipts basis, and (2) set a tax rate not to exceed the maximum rates established herein.

2. For cultivation license types based on plant count, the square footage based tax will be calculated using up to 100 square feet per plant allowed under the permit.

3. Notwithstanding the maximum tax rate established in Subsection (A)(1), the Board of Supervisors may, in its discretion, at any time by ordinance, implement a lower tax rate for all persons engaged in commercial cannabis cultivation in the unincorporated area of the County or establish differing tax rates for different categories of commercial cannabis cultivation, including commercial cannabis cultivation for medical or adult use, subject to the maximum rate established in Subsection (A)(1). The Board of Supervisors may, by ordinance, also increase any such tax rate from time to time, not to exceed the maximum tax rate established in

Subsection (A)(1). Notwithstanding the maximum square foot per plant established in Subsection (A)(2) for cultivation license types based on plant count, the Board of Supervisors may, in its discretion, at any time by ordinance, implement a lower square footage per plant, and may, by ordinance, also increase such square footage from time to time, not to exceed the maximum square footage established in Subsection (A)(2).

4. Pursuant to Subsection (A), the commercial cannabis business tax on commercial cannabis cultivation is to be imposed on a square footage basis, and is set at the following rates, with permit types as defined in Chapter 26 of the Sonoma County Code:

| Permit Type | Rate Per Square Foot |
|--------------------|----------------------|
| Outdoor | |
| 1C: Cottage | \$0.50 |
| 1: Specialty | \$2.00 |
| 2: Small | \$3.00 |
| 3: Medium | \$5.00 |
| Indoor | |
| 1C: Cottage | \$1.88 |
| 1A: Specialty | \$7.50 |
| 2A: Small | \$11.25 |
| 3A: Medium | \$18.75 |
| Mixed Light | |
| 1C: Cottage | \$1.08 |
| 1B: Specialty | \$4.32 |
| 2B: Small | \$6.48 |
| 3B: Medium | \$10.80 |

5. Pursuant to Subsection (A), the square footage based tax for cultivation license types based on plant count will be calculated using 25 square feet per plant allowed under the permit.

B. Tax on All Other Commercial Cannabis Business

1. Every person who is engaged in commercial cannabis business, including but not limited to as a distributor, distribution facility, testing laboratory, transporter, manufacturer, nursery, dispensary, or engaging in delivery of cannabis in the unincorporated area of the County shall pay an annual commercial cannabis business tax at a rate of up to ten percent of gross receipts per fiscal year. The tax under this chapter shall not be imposed unless and until the Board of Supervisors, by ordinance, takes action to set a tax rate not to exceed the maximum rates established herein.

2. Notwithstanding the maximum tax rate established in Subsection (B)(1), the Board of Supervisors may, in its discretion, at any time by ordinance, implement a lower tax rate for all persons engaged in commercial cannabis business in the unincorporated area of the County or establish differing tax rates for different categories of commercial cannabis business, including commercial cannabis business for medical or adult use, subject to the maximum rate established in Subsection (B)(1). The Board of Supervisors may, by ordinance, also increase any such tax rate from time to time, not to exceed the maximum tax rate established in Subsection (B)(1).

3. Pursuant to Subsection (A), the cannabis business tax on every person who is engaged in commercial cannabis business, including but not limited to as a distributor, distribution facility, testing laboratory, transporter, manufacturer, cannabis nursery, dispensary, or engaging in delivery of cannabis in the unincorporated area of the County is set at the following rates:

| Operator | Percentage of Gross Receipts |
|--------------------|-------------------------------------|
| Manufacturer | 5% |
| Transporter | 0% |
| Distributor | 0% |
| Cannabis Nursery | 0% |
| Dispensary | 0% |
| Testing Laboratory | 0% |

Section 6. Reporting and Remittance of Tax. The commercial cannabis business tax imposed by this Chapter shall be imposed on a fiscal year basis and shall be due and payable in quarterly installments as follows:

A. Each person owing a commercial cannabis business tax, and each person on whom a 0% tax rate is imposed, shall, on or before the last day of the month following the close of each fiscal year quarter, prepare and submit a tax statement on the form prescribed by the Treasurer-Tax Collector and remit to the Treasurer-Tax Collector the tax due. The tax due shall be no less than the quarterly installment due, but the taxpayer may at any time pay the tax due for the entire fiscal year. Each business shall pay on or before the last day of the month following the close of each calendar quarter.

B. If the commercial cannabis business tax is owed on commercial cannabis cultivation, and the Board has specified that the square footage basis shall apply, the square footage tax due shall be paid based on the square footage of cultivation authorized by the County permit. The tax statement may include a request for adjustment of the tax due to square footage authorized but not utilized for cultivation, and/or crop loss, along with evidence substantiating the square footage utilized and/or crop loss. The decision to prorate or adjust the tax will be made at the sole discretion of the County. A fee may be adopted by the Board of Supervisors and collected by the agency having jurisdiction or the Treasurer-Tax Collector to pay for the cost of investigating, verifying, and opining on such request for adjustment of the tax.

C. All tax statements shall be completed on forms prescribed by the Treasurer-Tax Collector.

D. Tax statements and payments for all outstanding taxes owed the County are immediately due to the Treasurer-Tax Collector upon cessation of business for any reason.

E. The Treasurer-Tax Collector may, at his or her discretion, establish shorter or longer report and payment periods for any taxpayer as the Treasurer-Tax Collector deems necessary to insure collection of the tax.

F. The Treasurer-Tax Collection may, as part of administering the tax and in his or her discretion, modify the form of payment and take such other administrative actions as needed to facilitate collection of the tax.

Section 7. Registration. In order that the County will have an accurate record of parties collecting the cannabis business tax, prior to commencing business each person engaged in commercial cannabis cultivation and commercial cannabis business shall register such cannabis business with the Treasurer-Tax Collector, submitting any information deemed necessary by the Treasurer-Tax Collector.

Section 8. Payments and Communications – Timely Remittance. Whenever any payment, statement, report, request or other communication is due, it must be received by the Treasurer-Tax Collector on or before the final due date. A postmark will not be accepted as timely remittance. If the due date falls on Saturday, Sunday or a holiday, the due date shall be the next regular business day on which the County is open to the public.

Section 9. Payment – When Taxes Deemed Delinquent. Unless otherwise specifically provided under other provisions of this Chapter, the taxes required to be paid pursuant to this Chapter shall be deemed delinquent if not received by the Treasurer-Tax Collector on or before the due date as specified in Sections 6 and 8.

Section 10. Notice Not Required By County. The Treasurer-Tax Collector is not required to send a delinquency or other notice or bill to any person subject to the provisions of this Chapter. Failure to send such notice or bill shall not affect the validity of any tax or penalty due under the provisions of this Chapter.

Section 11. Penalties and Interest.

A. Any person who fails or refuses to pay any commercial cannabis business tax required to be paid pursuant to this Chapter on or before the due date shall pay penalties and interest as follows:

1. A penalty equal to twenty-five percent (25%) of the amount of the tax, in addition to the amount of the tax, plus interest on the unpaid tax calculated from the due date of the tax at the rate of one and one-half percent (1.5%) per month; and
2. If the tax remains unpaid for a period exceeding one calendar month beyond the due date, an additional penalty equal to twenty-five percent (25%) of the amount of the tax , plus interest at the rate of one and one-half percent (1.5%) per month on the unpaid tax.
3. Interest shall be applied at the rate of one and one-half percent (1.5%) per month on the first day of the month for the full month, and will continue to accrue monthly on the tax until the balance is paid in full.

B. Whenever a check or electronic payment is submitted in payment of a commercial cannabis business tax and the payment is subsequently returned unpaid by the bank for any reason, the taxpayer will be liable for the tax amount due plus the return check fee, penalties and interest as provided for in this Section, and any other amount allowed under state law.

C. The cannabis business tax due shall be that amount due and payable from the first date on which the person was engaged in cannabis business in the unincorporated area of the County, together with applicable penalties and interest calculated in accordance with Subsection (A) above.

D. Any person whose cannabis business tax is delinquent by at least sixty calendar days may be subject to revocation of the County permit associated with the subject cannabis business.

E. The Treasurer-Tax Collector is authorized to make an assessment in the manner provided for in Sections 25 and 26 of the anticipated tax liability for up to the following four quarters if any person has failed to file one or more returns or payments, or who has filed one or more delinquent returns or payments, in any twelve (12) month period, without curing the failure or delinquency within 60 days of the original due date after written notice from the Treasurer-Tax Collector of the failure or delinquency. Failure to remit the anticipated tax within 60 days of the notice of assessment shall be grounds for revocation of the County permit associated with the subject cannabis business.

Section 12. Waiver of Penalties. The Treasurer-Tax Collector may waive the first and second penalties of twenty-five percent each imposed upon any person if:

A. The person provides evidence satisfactory to the Treasurer-Tax Collector that failure to pay timely was due to circumstances beyond the control of the person and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, and the person paid the delinquent business tax and accrued interest owed the county prior to applying to the Treasurer-Tax Collector for a waiver.

B. The waiver provisions specified in this subsection shall not apply to interest accrued on the delinquent tax and a waiver shall be granted only once during any twenty-four month period.

Section 13. Refunds and Credits.

A. No refund shall be made of any tax collected pursuant to this Chapter, except as provided in Section 14.

B. No refund of any tax collected pursuant to this Chapter shall be made because of the discontinuation, dissolution, or other termination of a business.

Section 14. Refunds and Procedures.

A. Whenever the amount of any commercial cannabis business tax, penalty or interest has been overpaid, paid more than once, or has been erroneously collected or received by the County under this Chapter, it may be refunded to the claimant who paid the tax provided that a written claim for refund is filed with the Treasurer-Tax Collector within one (1) year of the date the tax was originally due and payable.

B. The Treasurer-Tax Collector, his or her deputies or any other County officer charged with the administration of this Chapter shall have the right to examine and audit all the books and business records of the claimant in order to determine the eligibility of the claimant to the claimed refund. No claim for refund shall be allowed if the claimant refuses to allow such examination of claimant's books and business records after request by the Treasurer-Tax Collector to do so. The Treasurer-Tax Collector may collect a fee adopted by the Board of Supervisors to pay for the cost of examination and audit should the books and records be provided in a form insufficient to allow the Treasurer-Tax Collector to make a determination on the claim for refund.

C. In the event that the commercial cannabis business tax was erroneously paid and the error is attributable to the County, the County shall refund the amount of tax erroneously paid up to one (1) year from when the error was identified.

Section 15. Exemptions from the Tax.

A. The provisions of this Chapter shall not apply to personal cannabis cultivation.

B. The provisions of this Chapter shall not apply to personal use of cannabis that is specifically exempted from state licensing requirements, that meets the definition of personal use or equivalent terminology under state law, and for which the individual receives no compensation whatsoever related to that personal use.

Section 16. Administration of the Tax.

A. It shall be the duty of the Treasurer-Tax Collector to collect the taxes, penalties, fees, and perform the duties required by this Chapter.

B. For purposes of administration and enforcement of this Chapter generally, the Treasurer-Tax Collector may from time to time promulgate such administrative rules and procedures consistent with the purpose, intent, and express terms of this Chapter as he or she deems necessary to implement or clarify such provisions or aid in enforcement.

C. The Treasurer-Tax Collector may take such administrative actions as needed to administer the tax, including but not limited to:

1. Provide to all commercial cannabis business taxpayers forms for the reporting of the tax;
2. Increase tax rates in accordance with this Chapter;
3. Provide information to any taxpayer concerning the provisions of this Chapter;
4. Receive and record all taxes remitted to the County as provided in this Chapter;
5. Maintain records of taxpayer reports and taxes collected pursuant to this Chapter;
6. Assess penalties and interest to taxpayers pursuant to this Chapter;
7. Determine amounts owed and enforce collection pursuant to this Chapter.

Section 17. Enforcement – Action to Collect.

A. Any taxes, penalties and/or fees required to be paid under the provisions of this Chapter shall be deemed a debt owed to the County. Any person owing money to the County under the provisions of this Chapter shall be liable in an action brought in the name of the County for the recovery of such debt. The provisions of this Section shall not be deemed a limitation upon the right of the County to bring any other action including criminal, civil and equitable actions, based upon the failure to pay the tax, penalties and/or fees imposed by this Chapter or the failure to comply with any of the provisions of this Chapter.

B. In addition to any other remedies available under federal, state, or local law, if any amount required to be paid to the County under this Chapter is not paid when due, the Treasurer-Tax Collector may, within three (3) years after the amount is due record a certificate of lien specifying the amount of taxes, fees and penalties due, and the name and address of the person as it appears on the records of Treasurer-Tax Collector. The lien shall also specify that the Treasurer-Tax Collector has complied with all provisions of this Chapter in the

determination of the amount required to be paid. From the time of the filing for record, the amount required to be paid, together with penalties thereon, constitutes a lien upon all real property in the County owned by the person, or subsequently acquired by the person before the lien expires. The lien has the force, effect, and priority of a judgment lien and shall continue for ten (10) years from the filing of the certificate unless sooner released or otherwise discharged. A fee may be adopted by the Board of Supervisors and collected by the Treasurer-Tax Collector to pay for the cost of recording and administering the lien.

C. At any time within three (3) years after any person is delinquent in the payment of any amount herein required to be paid or within three (3) years after the last recording of a certificate of lien under Subsection B of this Section, the Treasurer-Tax Collector may issue a warrant for the enforcement of any liens and for the collection of any amount required to be paid to the County under this Chapter. The warrant shall be directed to the Sheriff and shall have the same effect as a writ of execution. The warrant shall be levied and sale made pursuant to it in the same manner and with the same effect as a levy and sale pursuant to a writ of execution. The Treasurer-Tax Collector may pay or advance to the Sheriff, the same fees, commissions and expenses for service provided by law for similar services pursuant to a writ of execution. The Treasurer-Tax Collector may approve the fees for publication in the newspaper.

D. At any time within three (3) years after recording a lien against any person, if the lien is not discharged and released in full, the Treasurer-Tax Collector may forthwith seize any asset or property, real or personal (including bank account), of the person and sell at public auction the asset or property, or a sufficient part of it to pay the amount due together with any penalties and interest imposed for the delinquency and any cost incurred on account of the seizure and sale. Assets or property of the person subject to seizure and sale subject to this Chapter shall not include any assets or property which is exempt from execution under the provisions of Code of Civil Procedure.

Section 18. Apportionment. If a person subject to the tax is operating both within and outside the unincorporated County, it is the intent of the County to apply the commercial cannabis business tax so that the measure of the tax fairly reflects the proportion of the taxed activity actually carried on in the County. For purposes of apportionment as may be required by law, the Treasurer-Tax Collector may promulgate administrative procedures for apportionment in accordance with state law.

Section 19. Constitutionality and Legality. This tax is intended to be applied in a manner consistent with the United States and California Constitutions and state law. None of the tax provided for by this Chapter shall be applied in a manner that causes an undue burden upon interstate commerce, a violation of the equal protection and due process clauses of the

Constitutions of the United States or the State of California or a violation of any other provision of the California Constitution or state law.

Section 20. Audit and Examination of Records and Equipment.

A. The Treasurer-Tax Collector shall have the power to audit and examine all books and records of persons engaged in cannabis businesses, including both state and federal income tax returns, California sales tax returns, bank statements, or other evidence documenting the gross receipts of persons engaged in cannabis businesses, and, where necessary, all equipment, of any person engaged in cannabis businesses in the County, for the purpose of ascertaining the amount of commercial cannabis tax, if any, required to be paid by the provisions hereof, and for the purpose of verifying any statements or any item thereof when filed by any person pursuant to this Chapter. If such person, after written demand by the Treasurer-Tax Collector, refuses to make available for audit, examination or verification such books, records or equipment as the administrator requests, the Treasurer-Tax Collector may, after full consideration of all information within his or her knowledge concerning the cannabis business and activities of the person so refusing, make an assessment in the manner provided in Sections 25 and 26 of any taxes estimated to be due. The Treasurer-Tax Collector may collect a fee adopted by the Board of Supervisors to pay for the cost of examination and audit should the books and records be provided in a form insufficient to allow the Treasurer-Tax Collector to make a determination of tax due.

B. It shall be the duty of every person liable for the collection and payment to the County of any tax imposed by this Chapter to keep and preserve, for a period of at least three (3) years, all records as may be necessary to determine the amount of such tax as he or she may have been liable for the collection of and payment to the County, which records the Treasurer-Tax Collector or his/her designee shall have the right to inspect at all reasonable times.

Section 21. Other Licenses, Permits, Taxes, Fees, or Charges. Nothing contained in this Chapter shall be deemed to repeal, amend, be in lieu of, replace or in any way affect any requirements for any permit or license required by, under or by virtue of any provision of any other title or chapter of this code or any other ordinance or resolution of the County, nor be deemed to repeal, amend, be in lieu of, replace or in any way affect any tax, fee or other charge imposed, assessed or required by, under or by virtue of any other title or chapter of this code or any other ordinance or resolution of the County. Any references made or contained in any other title or chapter of this code to any licenses, license taxes, fees, or charges, or to any schedule of license fees, shall be deemed to refer to the licenses, license taxes, fees or charges, or schedule of license fees, provided for in other titles or chapters of this code.

Section 22. Change of Ownership.

A. In the event that there is a change in ownership of any cannabis business, the new owner is required to submit an updated registration form to the Treasurer-Tax Collector.

B. Unless otherwise provided by law, upon the sale of any cannabis business:

(i) It is the joint and several liability of both the seller and buyer to remit any tax due up until the date of sale; and

(ii) A Certificate of Delinquent Cannabis Business Tax Lien may be filed against both the seller and/or buyer in an amount determined by the Treasurer-Tax Collector.

C. Following any change of ownership, the new owner is subject to an audit by the Treasurer-Tax Collector or his or her designee.

D. Any owner of a cannabis business required to collect or pay the cannabis business tax may apply for and receive, within 90 days of application, a Tax Clearance Certificate, provided that the taxes and any penalties are paid in full for the time period specified.

Section 23. Payment of Tax Does Not Authorize Unlawful Business.

A. The payment of a commercial cannabis business tax required by this Chapter, and its acceptance by the County, shall not entitle any person to carry on any cannabis business unless the person has complied with all of the requirements of this Code and all other applicable state laws.

B. No tax paid under the provisions of this Chapter shall be construed as authorizing the conduct or continuance of any illegal or unlawful business, or any business in violation of any local or state law.

Section 24. Deficiency Determinations. If the Treasurer-Tax Collector is not satisfied that any statement filed as required under the provisions of this Chapter is correct, or that the amount of tax is correctly computed, he or she may compute and determine the amount to be paid and make a deficiency determination upon the basis of the facts contained in the statement or upon the basis of any information in his or her possession or that may come into his or her possession within three (3) years of the date the tax was originally due and payable. One or more deficiency determinations of the amount of tax due for a period or periods may be made. When a person discontinues engaging in a business, a deficiency determination may be made at any time within three (3) years thereafter as to any liability arising from engaging in such business whether or not a deficiency determination is issued prior to the date the tax would

otherwise be due. Whenever a deficiency determination is made, a notice shall be given to the person concerned in the same manner as notices of assessment are given under Sections 25 and 26.

Section 25. Failure to Report – Nonpayment, Fraud.

A. Under any of the following circumstances, the Treasurer-Tax Collector may make and give notice of an assessment of the amount of tax owed by a person under this Chapter at anytime:

1. If the person has not filed a complete statement required under the provisions of this Chapter;
2. If the person has not paid the tax due under the provisions of this Chapter;
3. If the person has not, after demand by the Treasurer-Tax Collector, filed a corrected statement, or furnished to the Treasurer-Tax Collector adequate substantiation of the information contained in a statement already filed, or paid any additional amount of tax due under the provisions of this Chapter; or
4. If the Treasurer-Tax Collector determines that the nonpayment of any business tax due under this Chapter is due to fraud, a penalty of twenty-five percent (25%) of the amount of the tax shall be added thereto in addition to penalties and interest otherwise stated in this Chapter and any other penalties allowed by law.

B. The notice of assessment shall separately set forth the amount of any tax known by the Treasurer-Tax Collector to be due or estimated by the Treasurer-Tax Collector, after consideration of all information within the Treasurer-Tax Collector's knowledge concerning the business and activities of the person assessed, to be due under each applicable section of this Chapter, and shall include the amount of any penalties or interest accrued on each amount to the date of the notice of assessment.

Section 26. Tax Assessment – Notice Requirements. The notice of assessment shall be served upon the person either by personal delivery, or by a deposit of the notice in the United States mail, postage prepaid thereon, addressed to the person at the address of the location of the business or to such other address as he or she shall register with the Treasurer-Tax Collector for the purpose of receiving notices provided under this Chapter; or, should the person have no address registered with the Treasurer-Tax Collector for such purpose, then to such person's last known address. For the purposes of this Section, a service by mail is complete at the time of deposit in the United States mail.

Section 27. Tax Assessment – Hearing, Application, and Determination. Within ten (10) calendar days after the date of service the person may apply in writing to the Treasurer-Tax Collector for a hearing on the assessment. If application for a hearing before the County is not made within the time herein prescribed, the tax assessed by the Treasurer-Tax Collector shall become final and conclusive. Within thirty (30) business days of the receipt of any such application for hearing, the Treasurer-Tax Collector shall cause the matter to be set for hearing before him or her not later than thirty-five (35) business days after the receipt of the application, unless a later date is agreed to by the Treasurer-Tax Collector and the person requesting the hearing. Notice of such hearing shall be given by the Treasurer-Tax Collector to the person requesting such hearing not later than five (5) business days prior to such hearing. At such hearing said applicant may appear and offer evidence why the assessment as made by the Treasurer-Tax Collector should not be confirmed and fixed as the tax due. After such hearing the Treasurer-Tax Collector shall determine and reassess the proper tax to be charged and shall give written notice to the person in the manner prescribed in Section 26 for giving notice of assessment. The amount determined to be due shall be payable after thirty (30) calendar days of written notice unless it is appealed to the Board of Supervisors.

Section 28. Appeal Procedure. Any taxpayer aggrieved by any decision of the Treasurer-Tax Collector with respect to the amount of tax, interest, penalties and fees, if any, due under this Chapter may appeal to the Board of Supervisors by filing a notice of appeal with the Clerk of the Board of Supervisors within ten (10) calendar days of the serving or mailing by the Treasurer-Tax Collector of the determination of tax due. The Clerk shall fix a time and place for hearing such appeal, and the Clerk shall give notice in writing to such operator at the last known place of address. The Treasurer-Tax Collector shall present the matter to the Board of Supervisors and include evidence submitted by the taxpayer. The Treasurer-Tax Collector shall also include proposed findings and a resolution of the appeal. At the hearing, both the Treasurer-Tax Collector and the taxpayer shall have an opportunity to explain their case and introduce other statements or evidence. The Board of Supervisors may impose reasonable time limits on each party's presentation. The finding of the Board of Supervisors shall be final and conclusive and shall be served upon the appellant in the manner prescribed by this chapter for service of notice of hearing. Any amount found to be due shall be immediately due and payable upon the service of the notice.

Section 29. Conviction for Chapter Violation – Taxes not Waived. The conviction and punishment of any person for failure to pay the required tax shall not excuse or exempt such person from any civil action for the tax debt unpaid at the time of such conviction. No civil action shall prevent a criminal prosecution for any violation of the provisions of this Chapter or of any state law requiring the payment of all taxes.

Section 30. Violation Deemed Misdemeanor. Any person violating any of the provisions of this Chapter shall be deemed guilty of a misdemeanor and shall be punishable therefore as provided by Chapter 1, Section 7 of the Sonoma County Code.

Section 31. Severability. If any provision of this Chapter, or its application to any person or circumstance, is determined by a court of competent jurisdiction to be unlawful, unenforceable or otherwise void, that determination shall have no effect on any other provision of this Chapter or the application of this Chapter to any other person or circumstance and, to that end, the provisions hereof are severable. The Board of Supervisors hereby declares that it would have passed this Ordinance and every section, subsection, sentence, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional or invalid.

Section 32. Remedies Cumulative. All remedies and penalties prescribed by this Chapter or which are available under Chapter 1 of the Sonoma County Code and any other provision of law or equity are cumulative. The use of one or more remedies by the County shall not bar the use of any other remedy for the purpose of enforcing the provisions of this Chapter.

Section 33. Amendment or Repeal. This Chapter may be repealed or amended by the Board of Supervisors without a vote of the people to the extent allowed by law. However, as required by Article XIII C of the California Constitution, voter approval is required for any amendment that would increase the rate of any tax levied pursuant to this Chapter above the maximum rates established by this Chapter. The people of the County of Sonoma affirm that the following actions shall not constitute an increase of the rate of a tax:

- A. The restoration of the rate of the tax to a rate that is no higher than that set by this Chapter, if the Board of Supervisors has acted to reduce the rate of the tax;
- B. An action that interprets or clarifies the methodology of the tax, or any definition applicable to the tax, so long as interpretation or clarification (even if contrary to some prior interpretation or clarification) is not inconsistent with the language of this Chapter; or
- C. The collection of the tax imposed by this Chapter, even if the County had, for some period of time, failed to collect the tax; or

D. The establishment of a class of persons that is exempt or excepted from the tax or the discontinuation of any such exemption or exception (other than the discontinuation of an exemption or exception specifically set forth in this chapter); or

E. The Board of Supervisors' adoption of an ordinance, as authorized by Section 5, to raise the tax rate provided that the rate is not raised to a rate higher than the maximums established herein.

Section 34. CEQA. The approval of this Ordinance is exempt from the California Environmental Quality Act (Public Resources Code §§ 21000 et seq., "CEQA," and 14 Cal. Code Reg. §§ 15000 et seq., "CEQA Guidelines"). The Cannabis Business Tax to be submitted to the voters is a general tax that can be used for any legitimate governmental purpose; it is not a commitment to any particular action. As such, under CEQA Guidelines section 15378(b)(4), the tax is not a project within the meaning of CEQA because it creates a government funding mechanism that does not involve any commitment to any specific project that may result in a potentially significant physical impact on the environment. If revenue from the tax were used for a purpose that would have either such effect, the County would undertake the required CEQA review for that particular project. Therefore, pursuant to CEQA Guidelines section 15060 CEQA analysis is not required.

Section 35. Effective and Operative Dates. This ordinance shall take effect immediately upon its adoption by a majority of voters at the March 7, 2017 election. The operative date of Section 5 shall be April 6, 2017.

In regular session of the Board of Supervisors of the County of Sonoma introduced on the 6th day of December, 2016, and finally passed and adopted this 13th day of December, 2016, on regular roll call of the members of said Board by the following vote:

SUPERVISORS:

Gorin: ____ Rabbitt: ____ Zane: ____ Gore: ____ Carrillo: ____

Ayes: ____ Noes: ____ Absent: ____ Abstain: ____

Resolution #

Date:

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WHEREUPON, the Chair declared the above and foregoing Ordinance duly adopted and

SO ORDERED.

Chair, Board of Supervisors

County of Sonoma

ATTEST:

Sheryl Bratton,

Clerk of the Board of Supervisors